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2009 MAR 19 P 1:33

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COMMISSION
OFFICE OF GENERAL
COUNSEL
**Perkins
Coie**

2009 MAR 19 P 1:51
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Marc Erik Elias

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KSKeane@perkinscoie.com

March 16, 2009

AOR 2009-11

Thomaseia Duncan, Esq.
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: John Kerry for Senate Advisory Opinion Request

Dear Ms. Duncan:

Pursuant to 2 U.S.C. § 437f, we seek an advisory opinion on behalf of Senator John Kerry and his authorized committee, John Kerry for Senate (the "Committee"). The Committee wishes to confirm that it may enter into an agreement with White Mountain Films to provide \$300,000 in development funds for a documentary film tentatively entitled "Keeping Faith".

White Mountain Films is seeking investment funds so that it may produce "Keeping Faith." George Butler is the director and producer of the film; David Thorne is a producer; and Senator John Kerry may, subject to approval from the Senate Ethics Committee, serve as an executive producer. Pursuant to the proposed agreement between White Mountain Films and the Committee, the Committee will provide \$300,000 to be used for the film's development expenses. Such expenses may include research, travel, and the preparation of a printed story proposal for the film. This agreement is independent from, and is not conditional on, any agreement between Senator Kerry and White Mountain Films. A copy of the proposed agreement between the Committee and White Mountain Films is attached.

The agreement provides that the Committee shall make three separate payments to White Mountain Films. The first payment of \$150,000 is due upon execution of the agreement between the Committee and White Mountain Films; a second payment of \$90,000 is due upon submission by White Mountain Films of the initial draft of the film's printed story proposal to Mr. Thorne and Senator Kerry; and a final payment of \$60,000 is due upon presentation of the completed and approved printed story proposal.

If White Mountain Films obtains the minimum amount of funding required to produce the film, the Committee shall be entitled to receive a one-time return on its investment equal to 120

57152-0001/LEGAL15200149.1

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Perkins Coie LLP and Affiliates

percent of the total funds provided by the Committee to White Mountain Films. The potential return on the Committee's investment is comparable to the rate of return that will be offered to other investors. The Committee will report any payment received from White Mountain Films in a timely manner and as required by the Commission's disclosure provisions. In addition, any return on its investment will be deposited in the campaign depository account before the funds are used to make expenditures. *See* 11 C.F.R. § 103.3(a).

Neither Senator Kerry nor the Committee will have any right, title or interest in and to "Keeping Faith." The Committee shall have no control over the film's development or production, and shall not be entitled to any portion of the film's revenues other than the one-time return on its development investment described above. Furthermore, Senator Kerry will not receive any fee or other compensation in exchange for payments received by White Mountain Films from the Committee. A copy of the proposed agreement between Senator Kerry and White Mountain Films is attached.

Authorized campaign committees have wide discretion in deciding how to spend their funds. In addition to campaign-related expenses, campaign funds may be used for ordinary and necessary expenses of a federal officeholder; for donations to charities; for unlimited transfers to any national, state or local party committee; for donations to state and local candidates, and *for any other lawful purpose*, unless such use is personal use. *See* 2 U.S.C. § 439a(a); 11 C.F.R. § 113.2.

The Commission's regulations also specifically permit campaign committees to transfer funds for investment purposes. *See* 11 C.F.R. § 103.3(a). In prior advisory opinions, the Commission has permitted campaign committees to invest funds in a variety of investment vehicles, including government securities, mutual and bond funds, cash management accounts maintained by investment and brokerage firms, and professionally managed money market funds. *See, e.g.,* FEC Adv. Ops. 1999-08, 1997-06, 1986-18, 1980-39.

Here, the proposed payment to White Mountain Films is an investment, and is not "personal use." Making the payment does not provide a personal or financial benefit to Senator Kerry, nor is the payment made to fulfill a commitment or obligation that would exist irrespective of Senator Kerry's campaign or duties as a federal officeholder. *See* 2 C.F.R. § 439a(b); 11 C.F.R. § 113.1(g). Although Senator Kerry may be an executive producer of the film, he does not have any right, title or interest in and to the film and will not receive any payment from White Mountain Films as a result of the Committee's investment.

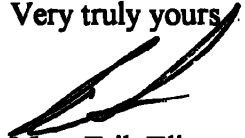
Furthermore, because there is no guarantee that the proposed payment to White Mountain Films will be repaid, the payment is an *investment* rather than a loan and therefore not subject to the requirements of 11 C.F.R. § 100.52(b)(5). Any potential return on investment is comparable to that offered to other investors. In addition, any payment received from White Mountain Films

Thomasenia Duncan, Esq.
March 16, 2009
Page 3

will be deposited in the campaign depository account before use and will be reported as income on the Committee's reports in a timely manner.

Please do not hesitate to call us should you have any questions about this request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marc Erik Elias", written over a horizontal line.

Marc Erik Elias
Kate Sawyer Keane

Enclosures.

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**WHITE MOUNTAIN FILMS
165 EAST 80TH STREET
NEW YORK, NEW YORK 10019**

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2009 MAR 19 P 1:59

As of September 9, 2008

John Kerry For Senate Campaign Committee
c/o Perkins Coie
607 14th Street, NW
Washington D.C. 20005
Attn: Marc E. Elias, Esq.

Re: "Keeping Faith"

Dear Marc:

I have set forth below the proposed agreement between the John Kerry For Senate Campaign Committee ("Committee") and White Mountain Films ("WMF") with respect to the Committee's investment in the motion picture documentary tentatively entitled "Keeping Faith" ("Picture") to be directed and produced by George Butler ("Butler") as follows:

1. **Picture Specifications/Approvals:** Committee hereby acknowledges that (i) Butler shall be the director and the producer of the Picture; (ii) David Thorne ("Thorne") shall be a producer and Senator John Kerry ("Kerry") shall be an executive producer; and (iii) Caroline Alexander shall be attached as the writer of the Picture. In addition, Committee acknowledges that WMF shall be a principal producer of the Picture. As principal producer of the Picture, WMF shall have day-to-day control and responsibility of all aspects of the Picture subject to the terms and conditions set forth herein. Butler's services in connection with the Picture shall be rendered on a non-exclusive, but regular, in-person basis; it being understood that Butler shall render all services during development, pre-production, production and post-production of the Picture customarily rendered by directors of first class theatrical motion pictures in the United States entertainment industry.

2. **Copyright Ownership:** All right, title and interest in and to the Picture, including, without limitation, the copyrights in and to the Picture, shall be owned by WMF. Notwithstanding the foregoing, in the event that the parties elect to form a single purpose LLC in connection with the Picture ("LLC"), WMF may assign such right, title and interest in and to the LLC.

3. **Funding:** The parties acknowledge and agree that WMF is seeking to obtain up to Three Hundred Thousand Dollars (\$300,000) in connection with the development of the Picture ("Development Budget"), which amount shall be allocated for those development expenses ("Expenses") set forth in Exhibit A (attached hereto and made a part hereof) including, without limitation, research, travel and the preparation of a printed story proposal ("Proposal"). Committee shall provide development funds for the Picture in an amount equal to Three Hundred Thousand Dollars (\$300,000) ("Development Investment") which shall be allocated for the Expenses. The Development Investment shall be payable as follows: (i) fifty percent (i.e., \$150,000) upon execution of this Agreement; (ii) thirty percent (i.e., \$90,000) upon submission by WMF of the initial draft of the Proposal to Thorne and Kerry; and (iii) twenty percent (i.e.,

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\$60,000) upon presentation of the completed and approved Proposal by Thorne and Kerry. Provided that WMF is able to raise the entire Development Budget, it is the WMF's intent for the Proposal to be completed no later than six (6) months thereafter ("Development Term"). Kerry shall not receive any fee or other compensation in exchange for any amount received by WMF from the Committee.

4. **Production:** The parties acknowledge and agree that the overall production and post-production budget for the Picture is approximately Three to Five Million Dollars (\$3,000,000-\$5,000,000) ("Budget").

5. **Return of Development Investment:** Provided that the Committee provides the Development Investment and that the Picture is produced by WMF, the Committee shall be entitled to receive a one-time payment of One Hundred Twenty Percent (120%) of the Development Investment; it being understood that such return of the Development Investment shall be paid by WMF, at such time, if ever, as the minimum threshold of the Budget which is required to produce the Picture is actually raised ("Minimum Threshold").

6. **No Ownership Interest in the Picture:** Committee acknowledges that Committee does not have any right, title or interest in and to the Picture.

7. **Press/Confidentiality.**

7.1 During the Development Term, WMF acknowledges agrees that it shall not directly disclose to the press that (i) Kerry is an executive producer of the Picture, or (ii) the terms and conditions of the Agreement unless WMF has obtained the prior consent of Kerry and/or his representatives. Without limiting the generality of the foregoing, WMF shall be authorized to (i) issue publicity solely concerning WMF, Butler, Alexander, Thorne and/or any other individual rendering services in connection with the Picture; and (ii) issue publicity concerning the Picture (subject to the first sentence of this provision). WMF and Thorne shall be entitled to disclose to potential investor(s) that Kerry is rendering executive producer services for the Picture subject to the prior approval of Kerry or his representatives (it being understood that David Wade is an authorized representative on behalf of Kerry).

7.2 WMF acknowledges and agrees that it shall not directly furnish or authorize the disclosure of any information acquired by WMF from Kerry and/or the Committee including information in connection with the business and activities relating to Kerry's services as set forth herein, whether disclosed orally or visually to WMF by Kerry and/or the Committee, and whether stored on any tangible medium or memorialized by WMF unless WMF has obtained the prior consent of Kerry and/or his representatives ("Confidential Information").

7.3 "Confidential Information" includes all originals, recorded and unrecorded copies of such Confidential Information, as well as information derived therefrom and portions thereof. Such Confidential Information also includes, but is not limited to, all written or audio materials obtained, generated, produced or otherwise acquired, including any notes, lists, charts, computer files, electronic mail messages, phone logs or other memoranda. Confidential Information does not include information which (i) at the time of disclosure to WMF, was generally available to the public, (ii) was already in WMF's possession on a non-confidential basis prior to its disclosure to WMF, (iii) becomes available to WMF on a non-

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confidential basis from a third party, or (iv) becomes generally available to the public after the time of disclosure to WMF.

7.4 WMF shall not be liable for disclosure of Confidential Information if such disclosure is pursuant to judicial action or other lawfully compelled disclosure. In this connection, WMF shall notify Kerry of such disclosure within five (5) days after such need becomes known and shall provide Kerry with a reasonable opportunity to contest such disclosure.

7.5 Upon termination of this Agreement, and within a reasonable period of time of receipt of written request from Kerry, WMF shall return all Confidential Information to Kerry.

8. **Risk of Investment:** Committee represents and warrants to WMF that it is authorized to enter into the agreement, and shall not be in breach of any other agreement by virtue of entering into this agreement and providing the Development Investment. Committee represents and warrants that it has knowledge and experience in financial and business matters, and that it is capable of evaluating the merits and risks of the provision of the Development Investment. Committee represents and warrants that it is fully aware of the relatively high risk involved in making an investment in a motion picture and that it understands, acknowledges and agrees that: (i) the motion picture industry is highly competitive and the market appeal and profitability of any particular motion picture cannot be predicted with any degree of certainty; and (ii) WMF has not obtained additional Development Investors and may not be able to obtain additional monies for the development and/or production of the Picture; (iii) in the event that the Picture is completed, there is no guarantee that WMF will be successful in obtaining a distributor for the Picture; and (iv) even if the Picture is distributed, there is no assurance that distribution of the Picture will produce any revenues. Committee acknowledges and agrees that WMF has not made and does not make any representations, warranties or guarantees that the Picture will be produced and/or distributed.

9. **Indemnification:** Committee shall defend, indemnify and hold WMF and its officers, directors, shareholders, partners, employees, representatives, agents, successors, licensees and assigns harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) which WMF or any such party may suffer or incur arising out of or in connection with the breach by Committee of any of the foregoing representations and warranties or any of Committee's agreements set forth herein. Without limiting Committee's indemnification of WMF, WMF shall defend, indemnify and hold Committee harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) which Committee may suffer or incur in connection with WMF's development, production and exploitation of the Picture.

10. **Insurance:** The parties acknowledge and agree that WMF has not yet obtained insurance in connection with the Picture, however, it is WMF's intent to obtain customary insurance for the Picture. At such time WMF elects to obtain insurance for the Picture, Committee shall be covered as an additional insured under WMF's errors and omissions insurance policy and general liability policy applicable to the Picture, subject to the terms, conditions and restrictions of such policy and endorsements thereto.

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11. **Arbitration:** Any controversy or claim arising out of or relating to this Agreement, its enforcement, arbitrability or interpretation shall be submitted to final and binding arbitration. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by the American Arbitration Association or JAMS/Endispute.

12. **Limitation of Remedies:** In the event of any breach or alleged breach of this agreement by WMF, Committee's sole right shall be to seek the recovery of money damages actually suffered and Committee shall not have the right to terminate or rescind this agreement or to otherwise enjoin or restrain the production, distribution, advertising or exploitation of the Picture or any rights therein.

13. **Miscellaneous:** Nothing contained herein shall be construed to create a partnership or a joint venture by or between Committee and WMF or to make either the partner of the other. This agreement constitutes the entire agreement between the parties with respect to the subject matter, superseding and replacing all prior oral or written understanding with regard thereto. This agreement may not be modified, waived or amended, except by a written instrument executed by the Committee and WMF. No waiver by either party hereto of any breach by the other party of any term, covenant or condition of this Agreement shall be deemed a waiver of any other breach (whether prior or subsequent) of the same or any other term, covenant or condition of this or any other agreement.

If the foregoing accurately reflects our understanding, please countersign this letter in the appropriate location below, thereby constituting it a binding and enforceable agreement between the parties.

Yours sincerely,

WHITE MOUNTAIN FILMS

By: _____

Its: _____

ACCEPTED AND AGREED:

JOHN KERRY FOR SENATE CAMPAIGN COMMITTEE

By: _____

Its: _____

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**WHITE MOUNTAIN FILMS
165 EAST 80TH STREET
NEW YORK, NEW YORK 10019**

As of September 9, 2008

Senator John Kerry
c/o Perkins Coie
607 14th Street, NW
Washington D.C. 20005
Attn: Marc E. Elias, Esq.

Re: "Keeping Faith"/Senator John Kerry/Executive Producer Agreement

Dear Marc:

I have set forth below the proposed agreement between Senator John Kerry ("Kerry") and White Mountain Films ("WMF") with respect to Kerry's executive producer services in connection the motion picture documentary tentatively entitled "Keeping Faith" ("Picture") to be directed and produced by George Butler ("Butler") as follows:

1. **Picture Specifications/Approvals:** Kerry hereby acknowledges that (i) Butler shall be the director and the producer of the Picture; and (ii) Caroline Alexander shall be attached as the writer of the Picture. In addition, Kerry acknowledges that WMF shall be a principal producer of the Picture. As principal producer of the Picture, WMF shall have day-to-day control and responsibility of all aspects of the Picture subject to the terms and conditions set forth herein. Butler's services in connection with the Picture shall be rendered on a non-exclusive, but regular, in-person basis; it being understood that Butler shall render all services during development, pre-production, production and post-production of the Picture customarily rendered by directors of first class theatrical motion pictures in the United States entertainment industry. Butler shall be entitled to receive producer and director fees commensurate with the overall budget of the Picture. Caroline Alexander shall be entitled to receive a writer fee commensurate with the overall budget of the Picture. The Picture will be produced by a signatory to the Directors Guild of America (DGA) and the Writers Guild of America (WGA). Accordingly, the LLC shall become a signatory to the DGA and WGA. Notwithstanding the foregoing, WMF shall consult with Kerry in connection with all material decisions in connection with the Picture.

2. **Copyright Ownership:** All right, title and interest in and to the Picture, including, without limitation, the copyrights in and to the Picture, shall be owned by WMF. Notwithstanding the foregoing, in the event that the parties elect to form a single purpose LLC in connection with the Picture ("LLC"), WMF may assign such right, title and interest in and to the LLC.

3. **Services/Control:**

3.1 Company hereby engages Kerry to render all services customarily rendered by executive producers of first-class theatrical motion pictures subject to the instructions and directions of WMF. Kerry's services shall be rendered in a first-class,

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professional manner and to the best of Kerry's ability. WMF's (and its designated representatives) determination in all manners respecting the performance of Kerry's services, including, without limitation, matters involving artistic taste, quality and judgment will be final and controlling. Kerry's services shall include, *inter alia*, (i) making introductions with respect to potential investors for the Picture (Kerry acknowledges that David Thorne ["Thorne"] and WMF shall also seek to obtain investors for the Picture); (ii) reviewing and providing comments to outlines, treatments and screenplays for the Picture, as well as the printed story proposal to be prepared by WMF ("Proposal") during the "Development Term" (as defined below); (iii) assisting the producers with respect to the procurement of interview subjects for the Picture; and (v) assisting Thorne and WMF with the preparation of the "Budget" (as defined below) for the Picture, as well as the production schedule for the Picture.

3.2 WMF shall have sole creative control of the Picture, including, without limitation, the hiring of the key crew of the Picture and final cut; provided, however, that Kerry, along with Thorne, shall have a right to approve (i) the Proposal (subject to the terms and conditions set forth in paragraph 3 above); (ii) the treatment; and (iii) the interview subjects who appear in the Picture (such approval not to be unreasonably withheld or delayed). WMF shall have sole business control of the Picture. Notwithstanding the foregoing, Kerry, along with Thorne, shall have a right to approve the following material business matters in connection with the Picture: (i) the investors; (ii) all paperwork to be executed by the investors; (iii) production partners (including sponsors, co-producers or otherwise); (iv) the Budget (it being understood that WMF shall have the right to modify the budget in order to reallocate line items of the budget at any time during production and/or post-production of the Picture); and (v) the distributor(s) of the Picture.

3.3 During the Development Term, WMF acknowledges agrees that it shall not directly disclose to the press that (i) Kerry is an executive producer of the Picture, or (ii) the terms and conditions of the Agreement unless WMF has obtained the prior consent of Kerry and/or his representatives. Without limiting the generality of the foregoing, WMF shall be authorized to (i) issue publicity solely concerning WMF, Butler, Alexander, Thorne and/or any other individual rendering services in connection with the Picture; and (ii) issue publicity concerning the Picture (subject to the first sentence of this provision). WMF and Thorne shall be entitled to disclose to potential investor(s) that Kerry is rendering executive producer services for the Picture subject to the prior approval of Kerry or his representatives (it being understood that David Wade is an authorized representative on behalf of Kerry).

3.4 WMF acknowledges and agrees that it shall not directly furnish or authorize the disclosure of any information acquired by WMF from Kerry and/or the John Kerry For Senate Campaign Committee ("Committee") including information in connection with the business and activities relating to Kerry's services as set forth herein, whether disclosed orally or visually to WMF by Kerry and/or the Committee, and whether stored on any tangible medium or memorialized by WMF unless WMF has obtained the prior consent of Kerry and/or his representatives ("Confidential Information").

3.4.1 "Confidential Information" includes all originals, recorded and unrecorded copies of such Confidential Information, as well as information derived therefrom and portions thereof. Such Confidential Information also includes, but is not limited to, all written or audio materials obtained, generated, produced or otherwise acquired, including any notes, lists, charts, computer files, electronic mail messages, phone logs or other memoranda.

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Confidential Information does not include information which (i) at the time of disclosure to WMF, was generally available to the public, (ii) was already in WMF's possession on a non-confidential basis prior to its disclosure to WMF, (iii) becomes available to WMF on a non-confidential basis from a third party, or (iv) becomes generally available to the public after the time of disclosure to WMF.

3.4.2 WMF shall not be liable for disclosure of Confidential Information if such disclosure is pursuant to judicial action or other lawfully compelled disclosure. In this connection, WMF shall notify Kerry of such disclosure within five (5) days after such need becomes known and shall provide Kerry with a reasonable opportunity to contest such disclosure.

3.4.3 Upon termination of this Agreement, and within a reasonable period of time of receipt of written request from Kerry, WMF shall return all Confidential Information to Kerry.

4. **Production:** Provided that the full Development Investment is actually procured, it is the parties' intent for the Proposal to be completed no later than six (6) months thereafter ("Development Term"). The parties acknowledge and agree that the overall production and post-production budget is approximately Three to Five Million Dollars (\$3,000,000-\$5,000,000) ("Budget"). The Picture shall be produced, completed and delivered materially in accordance with the Budget (which shall be subject to such changes as may arise during the ordinary course of production and post-production of the Picture). Notwithstanding the foregoing, Kerry acknowledges that WMF reserves the right to raise additional funds ("Additional Funds") in the event that WMF deems, in its sole good faith discretion, that such Additional Funds are necessary in connection with the production or distribution of the Picture; provided, however, that the procurement of such Additional Funds shall be subject to the terms and conditions set forth in paragraph 3.2 herein. The parties acknowledge and agree that the first phase of principal photography shall be for a period of ninety (90) days and that following commencement of the editing of the Picture, additional principal photography of the Picture may take place for up to forty-five (45) additional days.

5. **Sponsorship:** Kerry shall have the right to seek to initiate, obtain and deliver sponsorship from third parties (collectively, "Sponsor(s)"). WMF, Thorne and Kerry shall regularly apprise one another of their respective efforts to initiate, obtain and deliver monies from potential Sponsor(s) by providing each other with the names of each entity that each party wishes to approach with respect to sponsorship for the Picture. WMF, Thorne and Kerry shall mutually approve each such potential Sponsor(s) which would be approached. In the event that WMF, Thorne or Kerry actually delivers Sponsor(s) which provides sponsorship funding in connection with the Picture, such Sponsor(s) will be required to execute certain reasonable documentation which such Sponsor(s), or its advisor(s), in good faith deems necessary. WMF, Thorne and Kerry shall keep one another fully apprised of their efforts to procure Sponsor(s) by providing reasonably detailed updates.

6. **Consideration:** In consideration of the services to be rendered by Kerry in connection with the Picture, Kerry shall be entitled to receive an executive producer credit in the main titles (or in the end titles if main titles are not used) on a separate card and in the "billing block" of paid advertising of the Picture whenever such billing block appears along with other individuals who are accorded producer credit. All other matters with respect to credits

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hereunder shall be determined in WMF's sole discretion. No casual or inadvertent failure of WMF to comply with the provisions of this paragraph, nor any failure by third parties to comply with their agreements with WMF, shall constitute a breach of this agreement by WMF or such third parties. In the event of any failure by WMF to comply with this provision, and upon written notice from Kerry thereof, WMF shall make good faith efforts to cure prospectively any such material failure to accord Kerry credit hereunder with regard to positive prints and/or advertising materials created after the date of WMF's receipt of such notice. Notwithstanding the foregoing, Kerry shall have the right to elect not to take a credit in connection with the Picture; provided, however, that Kerry makes such election prior to final credit lock.

7. No Ownership Interest in the Picture; Results and Proceeds: Kerry acknowledges that Kerry does not have any right, title or interest in and to the Picture. Kerry acknowledges that all results and proceeds of Kerry's services hereunder and any material, whether written or oral, contributed or submitted to WMF in connection with the Picture are being specially ordered by WMF for use as part of a motion picture and shall be considered a "work made for hire" for WMF and, therefore, WMF shall be the author and copyright owner thereof for all purposes throughout the universe. If for any reason any of the foregoing results and proceeds or materials are not deemed a work-made-for-hire then Kerry hereby grants and irrevocably assigns to WMF all such rights.

8. Representations and Warranties: Kerry represents and warrants that Kerry:

8.1 Has the right, power and authority to make and enter into and fully perform this Agreement and to grant to WMF all of the rights herein granted to WMF. Kerry is not subject to any obligation or disability which will or might prevent Kerry from fully keeping and performing all of the covenants and conditions to be kept or performed by Kerry hereunder, and Kerry has not made nor will make any grant, assignment, commitment or do or permit any act which will or might interfere with or impair the full and complete performance of Kerry's services or WMF's full and complete enjoyment and exercise of the rights and privileges granted herein.

8.2 Any and all material written or furnished by Kerry hereunder is or will be original with Kerry, shall not have been exploited in any manner or medium or (provided that Kerry notifies Company thereof) or shall be in the public domain throughout the world, and shall not infringe upon or violate the right of privacy of, or constitute a libel, slander or unfair competition against, or violate any common law right, copyright or any other right of any person or entity.

8.3 There are (and will be) no liens, claims or encumbrances which might conflict with or otherwise affect any of the provisions of this Agreement or WMF's promotion or exploitation of the Picture (and all rights therein) in any and all media whether now known or hereafter devised throughout the universe in perpetuity; it being agreed, without limiting the generality of the foregoing, that Kerry's representations, warranties, indemnity and grant of rights hereunder shall survive the suspension and/or termination, if ever, of Kerry's engagement in connection with the Picture.

Kerry acknowledges and agrees that WMF has not made and does not make any representations, warranties or guarantees that the Picture will be produced and/or distributed.

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9. **Indemnification:** Kerry shall defend, indemnify and hold WMF and its officers, directors, shareholders, partners, employees, representatives, agents, successors, licensees and assigns harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) which WMF or any such party may suffer or incur arising out of or in connection with the breach by Kerry of any of the foregoing representations and warranties or any of Kerry's agreements set forth herein. Without limiting Kerry's indemnification of the WMF, WMF shall defend, indemnify and hold Kerry, his heirs, executors, successors and assigns harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorneys' fees and costs) which Kerry may suffer or incur in connection with the development, production and exploitation of the Picture.

10. **Insurance:** The parties acknowledge and agree that WMF has not yet obtained insurance in connection with the Picture, however, it is WMF's intent to obtain customary insurance for the Picture. At such time as WMF elects to obtain insurance for the Picture, Kerry shall be covered as an additional insured under WMF's errors and omissions insurance policy and general liability policy applicable to the Picture, subject to the terms, conditions and restrictions of such policy and endorsements thereto.

11. **Arbitration:** Any controversy or claim arising out of or relating to this Agreement, its enforcement, arbitrability or interpretation shall be submitted to final and binding arbitration. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by the American Arbitration Association or JAMS/Endispute.

12. **Limitation of Remedies:** In the event of any breach or alleged breach of this agreement by WMF, Kerry's sole right shall be to seek the recovery of money damages actually suffered and Kerry shall not have the right to terminate or rescind this agreement or to otherwise enjoin or restrain the production, distribution, advertising or exploitation of the Picture or any rights therein.

13. **Miscellaneous:** Nothing contained herein shall be construed to create a partnership or a joint venture by or between Kerry and WMF or to make either the partner of the other. This agreement constitutes the entire agreement between the parties with respect to the subject matter, superseding and replacing all prior oral or written understanding with regard thereto. This agreement may not be modified, waived or amended, except by a written instrument signed by Kerry and WMF. No waiver by either party hereto of any breach by the other party of any term, covenant or condition of this Agreement shall be deemed a waiver of any other breach (whether prior or subsequent) of the same or any other term, covenant or condition of this or any other agreement.

If the foregoing accurately reflects our understanding, please countersign this letter in the appropriate location below, thereby constituting it a binding and enforceable agreement between the parties.

Yours sincerely,

WHITE MOUNTAIN FILMS

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An Authorized Signatory

ACCEPTED AND AGREED:

Senator John Kerry



"Keane, Kate Sawyer
(Perkins Coie)"

To

cc

bcc

04/24/2009 11:29 AM

Subject RE: John Kerry for Senate Advisory Opinion Request

Dear Ms. Heiden,

I am writing to confirm the accuracy of the information provided below regarding the advisory opinion request submitted on behalf of John Kerry for Senate. There are no changes to the statements below.

Please let me know if you require additional information, or if there are any further questions.

Thank you for your attention to this matter.

Kate Sawyer Keane | Perkins Coie LLP

POLITICAL LAW GROUP

607 14th Street, Suite 800

Washington, DC 20005

PHONE:

FAX:

E-MAIL:

IMPORTANT TAX INFORMATION: *This communication is not intended or written by Perkins Coie LLP to be used, and cannot be used by the taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended.*

NOTICE: *This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.*

From:

Sent: Wednesday, April 15, 2009 1:18 PM

To: Keane, Kate Sawyer (Perkins Coie)

Cc:

Subject: John Kerry for Senate Advisory Opinion Request

Dear Ms. Keane:

During our telephone conversation on April 14, 2009, you provided us with additional information regarding your request for an advisory opinion. We have set out below a summary of the relevant facts from the information you provided to us. Please review the statements below and either confirm their accuracy or correct any misperceptions.

1) White Mountain Films ("WMF") is a single-member LLC, and is taxed as a sole proprietorship.

2) Neither Senator John Kerry, nor any member of his immediate family, has any ownership interest in WMF.

3) WMF does not currently have any other investors for "Keeping Faith" (the "Film"), although it is seeking investors. While there is no form investor agreement, the expectation is that any agreement with other investors will be comparable to the agreement with John Kerry for Senate (the "Committee"), including the 120% return on investment included in the Committee's Agreement.

4) In Clause 5 of the Committee's Agreement ("Return of Development Investment"), the language "the Committee shall be entitled to receive a one-time payment of One Hundred Twenty Percent (120%) of the Development Investment..." means that as long as the other conditions for a return on investment are met (WMF meeting the specified fundraising threshold and producing the Film), the Committee will receive a 120% return on its investment.

5) The Kerry Agreement and the Committee Agreement are separate; the Kerry Agreement will go forward, even if the Committee Agreement does not.

6) Neither George Butler (director and producer of the Film) nor David Thorne (producer of the Film) received their positions contingent upon their providing funding for the Film. George Butler, however, is the single member of WMF, and therefore has presumably provided funding for WMF.

7) The Film is about soldiers in Iraq, and the effects of a certain type of wound. The Film will not contain any express advocacy, and will not promote, support, attack, or oppose, any clearly identified Federal candidate.

8) Senator John Kerry and the Committee understand that moving forward with the advisory opinion process mean that the advisory opinion request and all supporting documents, including both Agreements, will be placed on the public record and on the Commission's website. Senator Kerry and the Committee wish to proceed with the advisory opinion process, notwithstanding the confidentiality clauses contained in both Agreements.

We would appreciate your response by email. Thank you very much for your cooperation.

Esther Heiden
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